Supreme Court, U.S.
FILED
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No. 95-1478

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JAY PRINTZ, Sheriff/Coroner,
Ravalli County, Montana,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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STATEMENT CONCERNING SCOPE OF ISSUES

Although the United States agrees that the petition for a writ of certiorari should be granted, it would narrowly restrict the issue to the constitutionality of the federal command in 18 U.S.C. §922(s)(2) that chief law enforcement officers (CLEOs) ascertain the lawfulness of handgun transactions. (Br. for the US, Question Presented). The United States implies that this is the only command to which petitioner objects. (Br. at 4, 9, 10.)

However, two other commands are at issue as well--the commands that CLEOs destroy records concerning handgun purchasers, and provide the reasons for adverse determinations. §922(s)(6)(B) and (C). These commands were declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). The Petition for a Writ of Certiorari clearly states that these commands are at issue here. (Question Presented; pages 9-10, 15.)

Moreover, since the Ninth Circuit's decision at bar upheld all three commands, it never reached the issue of whether the unconstitutional commands are severable from the remainder of §922(s). These other provisions concern requirements that licensed firearms dealers provide information on prospective handgun purchasers to CLEOs and that purchasers wait five days before taking possession of the handgun unless cleared by the CLEO before that time.

The district court in *Printz* held these provisions to be

severable (Petition, App. 61-66a), as did the Fifth Circuit in *Koog*, slip op. 25-28. Petitioner here as well as the sheriffs in *Koog* argued that the provisions are not severable.

Accordingly, should this petition for a writ of certiorari be granted, this Court should specify the issues before the Court to be whether §922(s)(2), (6)(B) and (C) are unconstitutional and, if so, whether these provisions are severable from the remainder of §922(s).

CONCLUSION

The petition for the writ of certiorari should be granted and the scope of issues presented should include whether 18 U.S.C. §922(s)(2), (6)(B) and (C) are unconstitutional and, if so, whether these provisions are severable from the remainder of §922(s).

Respectfully submitted,

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